

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

THE CENTER FOR INVESTIGATIVE
REPORTING and MATTHEW SMITH,
1400 65th St., Suite 200
Emeryville, CA 94608

Plaintiffs,

v.

U.S. DEPARTMENT OF STATE,
2201 C Street, NW
Washington, DC 20520

Defendant.

Case No. 19-cv-1726

ECF CASE

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, for injunctive and other appropriate relief. The Center for Investigative Reporting (“CIR”) and Matthew Smith (together, “Plaintiffs”) seek expedited processing and release of agency records requested from Defendant United States Department of State (“State Department”).

2. On November 27, 2018, and again on March 8, 2019, Plaintiffs submitted a Freedom of Information Act (“FOIA”) request to the State Department seeking records relating to communications between the office of The Honorable Marie L. Yovanovitch, the former-United States Ambassador to Ukraine, and an attorney representing Sam Kislin.

3. It is known that, through his attorney, Mr. Kislin has sought to gain the assistance of the State Department in his efforts to recover assets located in Ukraine that were frozen by the Ukrainian government as part of its investigation into allegations of political corruption by former Ukrainian President Viktor Yanukovich.

4. The public interest in the release of the requested records is substantial as they relate to efforts to enlist the assistance of the State Department to intercede with the Ukrainian

government in matters related to ongoing investigations of political corruption by Ukrainian officials.

5. To date, the State Department has failed to comply with the Freedom of Information Act's requirements, including its statutory deadlines, and has provided no response to Plaintiffs.

6. Plaintiffs now ask the Court for an injunction requiring the State Department to promptly release the requested records.

PARTIES

7. Plaintiff CIR publishes *Reveal*, an online news site at revealnews.org, and produces *Reveal*, a weekly public radio show with approximately 1 million listeners per week. Founded in 1977 as the first non-profit investigative news organization, CIR has received multiple awards for its reporting. CIR is a non-profit established under the laws of the State of California, with its primary office in Emeryville, California.

8. Matthew Smith is a staff reporter for *Reveal* and an employee of CIR.

9. The State Department is an "agency" of the United States within the meaning of 5 U.S.C. § 552(f)(1). It has its headquarters in Washington, D.C. Upon information and belief, the State Department has records responsive to the FOIA request.

JURISDICTION

10. The Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(C)(i). This Court also has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1346, and 5 U.S.C. §§ 701-706.

VENUE

11. Venue is proper in this district under 5 U.S.C. § 552(a)(4)(B) and 28 U.S.C. §§ 1391(e) and 1402.

FACTUAL BACKGROUND

**Sam Kislin, the Dannenburg Letter, and Reporting on
the State Department's Involvement in Corruption in Ukraine**

12. The FOIA request relates to an ongoing investigation by The Center for Investigative Reporting into whether, and, if so, to what extent, the United States government interceded, on behalf of American business interests, into an ongoing investigation by the Ukrainian government into allegations of corruption by former Ukrainian President Yanukovych.

13. Specifically, the FOIA request relates to a letter, dated January 4, 2018, from Jeffrey Dannenburg, Esq., of the New York law firm Kestenbaum, Dannenburg & Klein LLP, to former-Ambassador Yovanovitch, in which Dannenberg requested assistance in recovering certain assets owned, according to Dannenburg, by various business interests owned by Mr. Kislin. The letter, a copy of which is attached as Exhibit 1, claimed that the Kislin-owned companies were the beneficial owners of Ukrainian government-issued bonds valued at more than \$20 million.

14. According to the letter, the bonds and the proceeds of interest payments on the bonds were on deposit in the State Savings Bank of Ukraine (also known as Oschadbank) and had been frozen at the request of Ukrainian prosecutors investigating the allegations of corruption by the former president. *See* Exhibit 1. On behalf of the Kislin-owned companies, Dannenburg requested the assistance of former-Ambassdor Yovanovitch in recovering the assets. *Id.*

15. Reporting by The Center for Investigative Reporting and other news organizations has revealed great public interest in the fact that hundreds of global political leaders—including former-President Viktor Yanukovych, as well as members of President Trump's cabinet and Russian-backed interests—have made extensive use of complex financial transactions, typically involving offshore shell companies, to hide their interests in assets and to avoid scrutiny in the participants' home countries. The International Consortium of Investigative Journalists and

Reveal, *Offshore Trove Exposes Trump-Russia Links and Piggy Banks of the Wealthiest One Percent*, REVEAL, Nov. 5, 2017, <https://bit.ly/2iwCxFO>.

16. Additional news reporting has also shown great public interest in any evidence that former Ukraine President Yanukovich diverted public assets for his personal use, particularly given its globalized impact on United States. Matthew Smith and the International Consortium of Investigative Journalists, *The Paradise Papers*, REVEAL, Nov. 5, 2017, <https://bit.ly/2Wmzm5G>; Will Jordan, *Secret Documents Reveal a Plot by Eastern European Oligarchs to Profit from Billions of Dollars Believed To Have Been Stolen by the Removed Ukrainian President Viktor Yanukovich*, AL JAZEERA, Jan. 10, 2018, <https://bit.ly/2MCNXuf>.

The FOIA Request

17. On March 8, 2019, Plaintiffs submitted a FOIA request, via electronic submission, to the State Department. The request sought the following records, created between January 1, 2015 to March 8, 2019:

- Communications, reports, memos, and other records relating to a letter, dated January 4, 2018, from Jeffrey Dannenburg to Ambassador Yovanovitch, as well as a copy of the letter in the State Department's possession.
- Communications and records of communications involving the office of Marie L. Yovanovitch, the United States Ambassador to Ukraine, and representatives of the companies Opalcore Ltd., and affiliated companies Exbridge Properties L.P. and Trans Commodities New York, Inc.
- Communications and records of communications involving the office of the U.S. Ambassador to Ukraine and representatives of Seymon "Sam" Kislin (who is believed to be the controlling shareholder of Opalcore, Exbridge, and Trans Commodities), including Jeffrey C. Dannenberg.
- U.S. Embassy and/or State Department communications and reports concerning requests for assistance by Opalcore, Trans Commodities, Exbridge, Kislin and/or Dannenburg.

A true and correct copy of the FOIA request, dated March 8, 2019, is attached hereto as Exhibit 2.

18. On May 8, 2019, and again on May 23, 2019, Plaintiff Matthew Smith telephoned the State Department's FOIA office to inquire about the status of the FOIA request and to request that the State Department provide Plaintiffs with the FOIA request's tracking number.

19. On May 23, 2019, the State Department emailed Plaintiff Matthew Smith, informing him that the FOIA request had been assigned tracking number F-2019-06295.

20. On May 28, 2019, Plaintiffs received a letter from the State Department, dated May 23, 2019, acknowledging his FOIA request and assigning tracking number F-2019-06295. In addition to acknowledging the request and assigning a tracking number, the letter also informed Plaintiffs that the State Department had made the following determinations regarding the FOIA request: (1) the State Department had agreed to waive processing fees pursuant to 22 C.F.R. § 171.16; (2) the State Department had denied Plaintiffs' request to process the FOIA request on an expedited basis pursuant to 22 C.F.R. § 171.11; and (3) the State Department had assigned the FOIA request to the agency's "complex" track. A true and correct copy of the State Department's letter, dated May 23, 2019, is attached hereto as Exhibit 3.

21. Plaintiffs have received no further response to their FOIA request.

22. The State Department has failed to respond to Plaintiffs' FOIA request within the statutory time frame required under the FOIA.

CAUSE OF ACTION

Violation of Freedom of Information Act

23. Plaintiffs repeat and reallege paragraphs 1–22.

24. The State Department is subject to FOIA and must therefore release in response to a FOIA request any disclosable records in its possession and provide a lawful reason for withholding any materials as to which it is claiming an exemption.

25. The State Department has no lawful basis for declining to release the records requested by Plaintiffs under FOIA.

26. The State Department has failed to act on Plaintiffs' request within the 20 business days required by FOIA. *See* 5 U.S.C. § 552(a)(6)(A)(i). Accordingly, Plaintiffs are deemed to have exhausted their administrative remedies under FOIA.

27. Plaintiffs are entitled to an order compelling the State Department to produce records responsive to their FOIA request.

REQUESTED RELIEF

WHEREFORE, Plaintiffs pray that this Court:

1. Declare that Defendant U.S. Department of State violated FOIA by failing to comply with the 20 business days required by FOIA and notifying Plaintiffs of any determination;

2. Declare that the documents sought by their FOIA request, as described in the foregoing paragraphs, are public under 5 U.S.C. § 552 and must be disclosed;

3. Order Defendant U.S. Department of State to provide the requested documents to Plaintiffs within 20 business days of the Court's order, or in the alternative, provide for expedited proceedings to adjudicate Plaintiffs' rights under FOIA;

4. Award Plaintiffs the costs of this proceeding, including reasonable attorneys' fees, as expressly permitted by FOIA; and

5. Grant Plaintiffs such other and further relief as this Court may deem just and proper.

DATED: June 13, 2019

Respectfully submitted,

By: /s/ John Clopper

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